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The United States and the Nicaragua Canal

A BILL and two resolutions contemplating the construction of a Nicaraguan Canal have been introduced in Congress during the present session. The bill, which was introduced by Senator McKellar on March 27, 1928, recommended an appropriation of \$10,000,000 to cover the initial construction, proposed the appointment of a Nicaraguan Canal Commission, and directed the President to begin negotiations with Nicaragua, Costa Rica, Salvador and Honduras to determine their interest in the canal.¹ The bill was referred to the Committee on Interoceanic Canals, but has not been reported.

The first of the two resolutions was introduced by Senator Edge on March 20, and was reported favorably, with amendments, on April 9 by the Committee on Interoceanic Canals. It authorizes the President to make a complete investigation and survey,² under

the direction of the Secretary of War and the supervision of the Chief of Engineers, for the purpose of revising and bringing up to date the report of the Isthmian Canal Commission, transmitted to Congress in 1901, and for the purpose of collecting additional information and data in order to ascertain the following:

1. The most practical route for an inter-oceanic canal over Nicaraguan territory, including suitable harbors at the termini.
2. The feasibility and approximate cost and maintenance of such a canal.
3. The cost of acquiring all private rights, privileges and franchises, if any, pertaining to such route. The investigation shall be made upon the basis of a canal having a capacity sufficient for the convenient passage of vessels of such tonnage and draft as may be reasonably anticipated. The Chief of Engineers, under the direction of the Secretary of War, shall also make an engineering survey and investigation for the purposes of determining the possibilities and cost of shipping.

1. U. S. 70th Congress, 1st Session, S. 3789.

2. U. S. 70th Congress, 1st Session, S. J. Res. 117,

The Edge Resolution authorized the appropriation of \$250,000 for carrying out the survey.

In reporting the Edge Resolution, the Committee stated that the annual reports of the Panama Canal Commission indicated that, if the business of the Canal continued to increase as it had during recent years, the capacity of the present Canal would be taxed to its limit in the course of ten, or at the outside, fifteen years. Suggestions had been made to increase the capacity of the Panama Canal, and also to construct a canal across Nicaragua. In the past quarter of a century, the report stated, engineering developments in the matter of sea-level canals, obviating the necessity of locks, had been such that a new survey should be made. The report added:

"It is believed that should the United States undertake the construction of a canal across Nicaragua, it would have a practical political effect, as the presence of the United States had in Panama and Colombia."

On May 3, 1928, Representative Denison introduced a resolution in the House similar to Senator Edge's resolution, providing, however, for an appropriation of \$150,000 instead of \$250,000 for the survey.³ The Denison Resolution likewise requests the President to enter into negotiations with Costa Rica, Salvador and Honduras to ascertain what interest these states might have in the proposed canal.

EARLY CANAL SURVEYS AND DIPLOMATIC NEGOTIATIONS

This report briefly reviews previous canal surveys in Nicaragua and other points on the Isthmus, the construction and maintenance costs of the Panama Canal and estimates of its potential capacity. It also summarizes the diplomatic negotiations and the protests of Costa Rica, Honduras and Salvador which accompanied the conclusion of the Bryan-Chamorro Canal Treaty between the United States and Nicaragua.

The possibility of maritime communication across the American Isthmus has excited the interest of explorers and governments, both European and American, since

the sixteenth century. As early as 1534 Charles V of Spain issued a royal decree directing an examination of the territory near Panama to determine the practicability of a water connection between the two oceans. From the sixteenth to the nineteenth century many surveys of the country between Mexico and Panama were made by European governments and by private American and European companies.

BEGINNING OF UNITED STATES INTEREST

American interest was definitely enlisted in 1825 when Aaron H. Palmer of New York made a proposal to the new Republic of Central America with a view to constructing an inter-oceanic canal, and sought the cooperation of the Secretary of State, Henry Clay. Palmer and his associates entered into a contract with the Republic in 1826, but they were unable to raise the funds necessary for construction, and their project failed.

In 1830 the Central American Republic began negotiations with a company in the Netherlands, and subsequently the several states of Central America offered and frequently granted treaties and concessions to American, British, French and other companies. All of these agreements went into default because of the inability of the firms to carry out their contracts.

The first detailed engineering survey of the Nicaragua route was made in 1850 by Colonel Childs for the American Atlantic and Pacific Ship Canal Company—headed by Cornelius Vanderbilt—which had negotiated a contract with Nicaragua. The project outlined by Colonel Childs was declared entirely practical and his surveys have served as a basis for the operations of practically every investigation conducted since his time.⁴

Since the failure of the Vanderbilt project, the United States Government has undertaken a number of surveys, of which the more important are the following: A survey by Captain Lull, United States Navy, 1872; the Interoceanic Canal Commission, 1876; Civil Engineer Menocol, United States

3. U. S. 70th Congress, 1st Session, H. J. Res. 295.

4. Isthmian Canal Commission, *Report*, 1899-1901.



Prepared by the Foreign Policy Association.

CANAL ROUTES IN CENTRAL AMERICA

Navy, 1884; the Nicaragua Canal Board, 1895; the Nicaragua Canal Commission, 1897-1899; the Isthmian Canal Commission, 1899-1901.⁵

REPORT OF ISTHMIAN CANAL COMMISSION IN 1901

No survey has been made since the report of the Isthmian Canal Commission was submitted to Congress in 1901. That Commission was instructed to investigate thoroughly all possible routes across the Isthmus, particularly in Nicaragua and Panama, in order to determine the most practicable site for a canal, and the probable cost of construction and operation at each of these two points. The report of the Commission contains the results of detailed surveys made in Nicaragua and Panama, together with recommendations for other possible routes.

It reviews the history of interoceanic projects and communications; analyzes rights, privileges and franchises; submits estimates with respect to the industrial and commercial value of a canal, its military value, and the cost of construction, maintenance and operation of canals in Nicaragua and Panama; and includes a detailed set of valuable maps, graphs, and charts.

After considering all the facts developed by the investigations, and having in view the terms offered by the new Panama Canal Company, the Commission came to the conclusion that the Nicaragua route was the most practicable and feasible one for an isthmian canal. The Commission recommended that the canal be under the control, management and ownership of the United States.

The specifications submitted called for a

⁵ A detailed description of the earlier canal surveys in Central America is contained in the *Report of the Isthmian Canal Commission, 1899-1901*.

canal with the Atlantic terminus at Greytown Harbor, and the Pacific terminus at Brito. The canal was to consist of eight double locks, 740 feet long and eighty-four feet wide. A dam was to be constructed on the San Juan River approximately fifty-two miles from the Great Lake of Nicaragua, thus extending the summit level to that point. In other words, the dam was to create an arm of the lake following more or less the course of the San Juan River to Conchuda, where it was to be situated. The canal was to follow the left bank of the San Juan River from the dam to Greytown on the Atlantic Coast. Four of the locks were planned for this section. The length of the canal from the Great Lake of Nicaragua to the Pacific at Brito was to be approximately seventeen miles. Four sets of double locks were to be built on this section. The minimum elevation of the summit level of the lake was to be fixed at 104 feet above sea level. The depth of the canal at summit level was to be not less than thirty-five feet. The total length of the canal from sea to sea was established at 183 miles, as compared to a total length of forty-nine miles for the Panama route.

COMPARATIVE COSTS OF THE TWO CANALS

A comparison of the estimated construction, maintenance and operation costs of the two canal routes, as submitted by the Commission, was as follows: The total cost of the Nicaragua Canal was estimated at \$189,864,062, while the Panama Canal was estimated at \$144,233,358. For a proper comparison, however, the Commission stated that the cost of acquiring the rights and property of the new Panama Canal Company should be added to the latter. The Commission estimated the value of these in the project recommended by it at \$40,000,000; therefore, the total cost of the two routes was about the same.

The estimated annual cost of maintaining and operating the Nicaragua Canal was \$1,300,000 greater than the corresponding charges for the Panama Canal. The Panama route would be 134.57 miles shorter from sea to sea than the Nicaragua route.

The Commission estimated that the time required to complete the Nicaragua Canal would be about six years, exclusive of a probable two-year period for preparation. This estimate was dependent upon being able to employ promptly the requisite force of laborers. The time required to construct the Panama Canal was estimated at eight years, exclusive of a two-year period for preparation and for unforeseen delays. The relatively longer time required at Panama was due to necessary excavation in the Culebra section, amounting to about 43,000,000 cubic yards of earth and rock.

Aside from engineering factors, the reasons which apparently influenced the Commission in favor of the Nicaragua route were those relating to concessions and contracts existing between the Government of Colombia and the new Panama Company. The report of the Commission stated that, if the Panama route was selected, these concessions must be removed in order that the two republics might enter into a treaty to enable the United States to control a strip of land on the Isthmus and to fix the considerations. No treaty existed at the time with any of the states within whose territory the two routes would lie authorizing the United States to occupy territory for the construction and operation of a canal.

TREATY BETWEEN NICARAGUA AND COSTA RICA

With respect to the treaty relations of Nicaragua, the report stated that a Nicaraguan treaty with Costa Rica, as well as the geographical situation, required the consent of both these governments before a canal could be constructed, for though but little of the territory of the latter would be used in any of the proposed plans, much of it would be affected thereby.

"Whatever doubt may have existed upon this point . . . was removed by the award made by President Cleveland on the 22nd day of March, 1888 in the arbitration for the settlement of the differences which had arisen between the two republics as to their respective boundary rights, in which it was expressly determined that in cases where the construction of an interoceanic canal across Nicaragua will involve an injury to the natural rights of Costa Rica, her consent to

its construction is necessary, and she may demand compensation for the concessions she is asked to make."⁶

The report of the Commission also stated that an examination of Nicaragua's former treaties indicated a well-defined policy with regard to the canal. This policy, further, was acceptable to the nations of the world interested in inter-oceanic communication. It comprised the following points:

1. A recognition of the right of sovereignty of Nicaragua over the territory of the Republic to be occupied by the canal.

2. The right of transit by this route and its innocent use to be enjoyed upon equal terms by other governments, their citizens and subjects; the neutrality of the route guaranteed by the contracting parties, with an agreement to use their influence to induce other nations to make a like guaranty.

3. Military force to be supplied by Nicaragua when needed for the security and protection of the canal and auxiliary works.

4. Nicaragua failing at any time to employ a force adequate for this purpose, other contracting parties may furnish such force with the consent of Nicaragua, and, in exceptional cases of imminent danger, without such consent.

5. Grants relating to interoceanic communications are to be subject to the privileges conceded by these treaties.

6. Each contracting party in these treaties stands toward the other on the footing of a most favored nation.

Despite these recommendations, the Congress of the United States voted in favor of the Panama route. In November, 1903, a treaty between the United States and Panama was signed authorizing the construction of this canal.

THE PANAMA CANAL

When the Panama Canal was built, the size of the locks and the depth of the channel recommended by the Isthmian Canal Commission were enlarged. The Canal was built with a minimum depth of forty-one feet; a minimum bottom width of 300 feet, and with locks 1,000 feet long and 110 feet wide. On account of these increased dimensions and certain unexpected difficulties in execution, the actual cost of the construction of the Canal was \$382,558,121.92, as against the estimated cost of \$144,233,358.00. This figure, however, does not include the cost of military defenses, fortifications, submarine bases, and the like, nor the \$25,000,000 paid to the Government of Colombia, as provided for under the treaty of April 6, 1914. Expenses for fortifications of the Panama Canal up to 1927 were approximately \$36,600,000. Interest paid on Panama Canal loans up to 1927 was approximately \$54,300,000. Thus, exclusive of interest payments on the Panama Canal bonds, the total construction cost of the Canal, including fortifications and the payments to Colombia, was approximately \$445,000,000.

The total expenses for maintenance and

operation of the Panama Canal from the time it was opened for traffic on August 15, 1914 to June 30, 1927, were approximately \$238,000,000. This figure is not exact because some of the Canal transit operations have shown a profit, which is deducted from the total expenses. The total revenue from tolls, taxes, and business operations from 1914 through the fiscal year 1927 was approximately \$318,000,000, giving a surplus of revenues over expenses of approximately \$80,000,000. This averages a little over \$6,000,000 a year. Presumably profits will increase in the forthcoming years.

The maintenance and operation expenses of the Canal do not include annual appropriations for military defenses, which in 1927 were approximately \$7,600,000. If this expense were included, the surplus over operating costs would have been roughly \$8,000,000 in 1927, instead of \$15,600,000, and correspondingly less in other years.

The maintenance and operating expenses of the Panama Canal are divided between Canal Transit Operations and Canal Business Operations. The following tables give the figures for both operations since the Canal was opened:

6. Isthmian Canal Commission, *Report*, 1899-1901. p. 116.

COMPARISON OF EXPENSES AND REVENUES⁷

TABLE I—CANAL TRANSIT OPERATIONS

	Tolls	Taxes, fees, postal re- ceipts, etc.	Total tran- sit revenues	Net canal tran- sit expenses	Net revenues (surplus)
1914	\$14,618.68	.....	\$14,618.68	\$166,030.91	¹ \$151,412.23
1915	4,343,383.69	.....	4,343,383.69	4,123,128.09	220,255.60
1916	2,399,830.42	\$158,711.96	2,558,542.38	6,999,750.15	¹ 4,441,207.77
1917	5,631,781.66	176,617.04	5,808,398.70	6,788,047.60	1979,648.90
1918	6,264,765.71	147,077.57	6,411,843.28	5,920,342.94	491,500.34
1919	6,156,118.95	197,898.03	6,354,016.98	6,112,194.77	241,822.21
1920	8,493,082.56	442,789.01	8,935,871.57	6,548,272.43	2,387,599.14
1921	11,261,919.31	778,197.39	12,040,116.70	9,328,300.14	2,711,816.56
Total	44,565,500.98	1,901,291.00	46,466,791.98	45,986,067.03	480,724.95
To business surplus .....	.....	480,724.95	480,724.95	.....	480,724.95
1922	44,565,500.98	1,420,566.05	45,986,067.03	45,986,067.03	.....
1923	11,193,383.47	192,208.85	11,385,592.32	7,919,017.63	3,466,574.69
1924	17,507,630.52	184,213.54	17,691,844.06	7,690,777.56	10,001,066.50
1925	24,289,603.16	392,250.73	24,681,853.89	8,373,905.39	16,307,948.50
1926	21,374,664.12	207,954.04	21,582,618.16	8,116,693.44	13,465,924.72
1927	22,927,456.03	217,680.50	23,145,136.53	7,993,468.47	15,151,668.06
1927	24,217,185.32	391,623.50	24,608,808.82	8,997,715.02	15,611,093.80
Total	166,075,423.60	3,006,497.21	169,081,920.81	95,077,644.54	74,004,276.27

1. Indicates deficit.

TABLE II—CANAL BUSINESS OPERATIONS

	Business revenues	Business expenses	Net revenues (surplus)
1914	\$690,298.32	\$695,720.71	¹ \$5,422.39
1915	2,135,074.92	2,191,475.70	¹ 56,400.78
1916	6,488,521.61	6,476,623.17	11,898.44
1917	7,579,588.44	7,540,160.78	39,427.66
1918	10,324,071.91	10,317,912.35	6,159.56
1919	13,684,881.18	13,623,853.92	61,027.26
1920	14,705,371.82	14,465,685.69	239,686.13
1921	15,232,317.08	14,668,105.88	564,211.20
Total	70,840,125.28	69,979,538.20	860,587.08
Expense carried in transit operation above .....	.....	379,862.13	¹ 379,862.13
Net revenues carried to surplus	70,840,125.28	70,359,400.33	480,724.95
Interest on public works, Panama and Colon, etc., not included in net revenues in prior years	619,584.59	.....	619,584.59
Adjustment status June 30, 1921	71,459,709.87	70,359,400.33	1,100,309.54
1922	7,747,227.57	7,423,968.41	323,259.16
1923	10,872,843.36	9,732,200.86	1,140,642.50
1924	12,968,777.29	12,067,153.17	901,624.12
1925	14,564,114.93	13,798,198.08	765,916.85
1926	15,874,478.01	15,033,167.72	841,310.29
1927	15,878,654.57	15,002,117.77	876,536.80
Total	149,365,805.60	143,416,206.34	5,949,599.26

1. Indicates deficit.

TABLE III—COMBINED OPERATIONS

	Revenues	Expenses	Surplus
Canal transit operations	\$169,081,920.81	\$95,077,644.54	\$74,004,276.27
Canal business operations	149,365,805.60	143,416,206.34	5,949,599.26
Total	318,447,726.41	238,493,850.88	79,953,875.53

The figures for canal transit expenses include lock operation and maintenance, channel maintenance, marine division, civil government, health and sanitation, public buildings and grounds, executive departments, amortization, depreciation, and so on. As

stated above, those listed in the total are net expenses. Some of the transit operations, such as services rendered by pilots and tugs, bring in earnings which are repaid to appropriations, and, hence, deducted from expenses. Transit revenues include tolls, taxes,

7. Panama Canal, Governor, *Annual Report*, 1927, p. 122.

fees, and postal receipts which are required by law to be paid into the United States Treasury each year, and are not used to meet expenses of maintenance and operation. Continuing appropriations are required each year for the operation and maintenance of canal transit.

Business revenues and expenses include the electric light and power system, telephone, telegraph and signal system, water system, docks, wharves, store houses, hotels, buildings, shops, dry docks, public works, and similar items. Business operations are placed on a self-supporting basis and revenues are not paid into the treasury, but are used to cover expenses and depreciation.

A new accounting system was installed in 1922 under which the commercial value of the Canal was established at approximately \$246,000,000. As the actual cost of construction was about \$382,000,000, a proportion of this sum, amounting to approximately \$113,000,000, was entered on the books as a national defense investment. In-

terest is not paid on the commercial investment of the Panama Canal, although sums are set aside for amortization on Canal fixed property, the usable life of which is figured at 100 years. The treatment of interest in connection with the amortization and depreciation reserves caused some complication in canal accounting. The interest is entirely theoretical since the Canal does not have control of the funds which would ordinarily be set aside by business concerns for accomplishing the purposes for which the charges were made.⁸ However, the surplus of \$15,600,000 for 1927 represents a return of 6.3 per cent on the commercial value of the Canal.

The question of the potential capacity of the Panama Canal has been raised by the Edge Resolution and the McKellar Bill. During the year 1927, 5,475 ships passed through the Canal. This is an average of fifteen ships a day. The yearly increase in traffic since 1915 is shown in the following table:

TRAFFIC THROUGH PANAMA CANAL, 1915-1927^{7a}

	<i>Number of Transits</i>	<i>Net Tonnage</i>	<i>Tolls</i>	<i>Tons of Cargo</i>
1915	1,075	3,792,572	4,367,550.19	4,888,454
1916	758	2,396,162	2,408,089.62	3,094,114
1917	1,803	5,798,557	5,627,463.05	7,058,563
1918	2,069	6,574,073	6,438,853.15	7,532,031
1919	2,024	6,124,990	6,172,828.59	6,916,621
1920	2,478	8,546,044	8,513,933.15	9,374,499
1921	2,892	11,415,876	11,276,889.91	11,599,214
1922	2,736	11,417,459	11,197,832.41	10,884,910
1923	3,967	18,605,786	17,508,414.85	19,567,875
1924	5,230	26,148,878	24,290,963.54	26,994,710
1925	4,673	22,855,151	21,400,523.51	23,958,836
1926	5,197	24,774,591	22,931,055.98	26,037,448
1927	5,475	26,227,815	24,228,830.11	27,748,215
Total	40,377	174,677,954	166,363,228.06	185,655,490

ESTIMATES OF POTENTIAL CAPACITY OF PANAMA CANAL

With respect to the potential capacity of the existing Canal, the Washington office of The Panama Canal stated to the Foreign Policy Association that "taking various elements into consideration, it has been established by the Canal authorities that the present Canal, with increased water facilities, provided by the projected dam at Alhajuela, is capable of handling 50,000,000 net tons of shipping per year. Based upon traffic through the Canal during the past few years, it has been established that the vol-

ume of shipping will reach this figure about 1960."

Governor Walker of the Panama Canal stated on April 13, 1928 that the present Canal has a 24-hour daily capacity of forty-eight ships, a little more than three times the traffic handled in 1927.

In answer to an inquiry from the Foreign Policy Association, the Washington office of The Panama Canal stated that recently the Governor of the Canal had tentatively estimated the cost of a third set

7a. Panama Canal, Governor, *Annual Report*, 1927, p. 6.

8. Panama Canal, Governor, *Annual Report*, for the fiscal year ending June 30, 1922, p. 52.

of locks at \$75,000,000 to \$100,000,000. It was estimated that the average capacity of the Canal after a third set of locks is built would be about 100,000,000 tons per year. This is approximately four times the tonnage carried in 1927, and double the potential capacity of the present Canal.

This statement was confirmed by Secretary of War Davis, who stated orally on April 28⁹ that the traffic of the Panama Canal could be quadrupled by building additional locks and opening the Canal to traffic after six o'clock in the evening. Secretary Davis added that the Department of War was studying the feasibility of increasing the capacity of the Panama Canal. Following a visit to Panama a year ago, Secretary Davis stated that the capacity of the Canal would be very materially increased by the Alhajuela reservoir which is now under construction. In his annual report, Secretary Davis estimated that "the reservoir would cost between \$10,000,000 and \$12,000,000."

As compared with a maximum cost of about \$110,000,000 for quadrupling the capacity of the Panama Canal, the construction of a Nicaraguan canal would cost approximately \$1,000,000,000, according to an estimate of the Department of War. A statement issued by the War Department in 1923 reviewed the estimates submitted by the Isthmian Canal Commission in 1901.

"If the increased dimensions used at Panama were adopted at Nicaragua, the cost of the Nic-

aragua route at pre-war prices would be about \$492,000,000.

"The cost of all construction and dredging work at the present time is a trifle more than twice the amount which it was prior to the War. This is due to the greatly increased price of coal and the higher price of labor in all lines, together with the difficulty in securing labor, and its diminished efficiency. This increase in cost, with the increase in dimensions of locks and canal, as indicated above, would make the Canal via the Nicaragua route, today, cost approximately \$1,000,000,000."¹⁰

While the War Department has not openly expressed disapproval of new surveys to investigate the feasibility of a Nicaraguan canal, the Secretary of War has issued several statements to the press, as indicated above, showing the comparative cost of enlarging the facilities at Panama and the probable cost of a new canal at Nicaragua. On the other hand, Senator Walter Edge points out that the distance from the Panama Canal to the mouth of the San Juan River is about 500 miles. Commerce transported from New York to San Francisco would, therefore, save approximately 1,000 miles, 500 miles down and 500 miles up, by using a Nicaraguan canal instead of the Panama Canal.¹¹

From an international standpoint, the United States is interested in protecting the Panama Canal from competition, *i. e.*, in preventing Nicaragua from granting the right to construct a canal across its territory to another state. This factor was important in leading to the negotiations of the Bryan-Chamorro Treaty.

THE BRYAN-CHAMORRO TREATY

After work began on the Panama Canal, interest waned in the Nicaragua route. Discussion of the Nicaragua Canal was revived late in 1912. At that time, Nicaragua had just passed through a serious revolution in which the United States had intervened with a large force of marines and bluejackets. The Nicaraguan Government was confronted with a heavy foreign debt, of which \$6,200,000 was held by the Ethelburga Syndicate, a London firm, and was being pressed by claims growing out of the revolution and the instability of the past years. Moreover, the

Loan Convention with the United States, under which Nicaragua was to receive a long-term loan of \$15,000,000 from American bankers for refunding the debt, adjusting claims and stabilizing the currency, had failed of ratification in the American Senate, and President Diaz was finding it difficult to meet the day-to-day expenses of carrying on the government.

Conversations with President Diaz, who returned to power after the revolution, convinced the American Minister to Nicaragua that an option giving the United

9. *United States Daily*, April 27, 1928.

10. *United States Daily*, April 30, 1928.

11. Address to the Academy of Political and Social Science, Philadelphia, May 12, 1928.

States authority to construct a canal over the Nicaragua route would not only ease the financial embarrassment of the Nicaraguan Government, but would also serve as a stabilizing influence in the country. Accordingly, on December 15, 1912, the American Minister informed the State Department that the Government of Nicaragua desired to negotiate a treaty with the United States, giving the latter an option to acquire a strip of land for construction of an inter-oceanic canal, the considerations being:

1. Payment by the United States of \$3,000,000 at the time of ratification together with an annual rent charge when the option is exercised.
2. A grant to the United States of a naval station in the Gulf of Fonseca and the islands off the Atlantic Coast of Nicaragua known as Great Corn and Little Corn Islands.¹²

THE CHAMORRO-WEITZEL TREATY OF FEBRUARY, 1913

On February 8, 1913, a treaty known as the Chamorro-Weitzel Treaty was signed in Managua by the American Minister and the Nicaraguan Secretary of Foreign Affairs. The terms of the treaty were not made public at the time. The first article, subsequently made known, reads as follows:

Article I. The Government of Nicaragua grants in perpetuity to the Government of the United States the unencumbered, exclusive rights necessary and convenient for the construction, operation and maintenance of an inter-oceanic canal by way of the San Juan River and the Great Lake of Nicaragua, or by way of any route over Nicaraguan territory, the details of the terms of which such canal shall be constructed, operated and maintained to be fixed by mutual consultation between the two governments whenever the construction of the canal shall be decided upon.

This treaty also provided for a ninety-nine year lease by the United States of the Great and Little Corn Islands, and the right of the United States to establish, operate and maintain for ninety-nine years a naval base in Fonseca Bay. An option was given the United States to renew these grants. In consideration of these stipulations, the United States was to pay \$3,000,000 to Nicaragua upon the ratification of the treaty, the disbursements to be ap-

proved by the Secretary of State of the United States or by such person as he might designate. This sum, subsequently paid to Nicaragua under the Bryan-Chamorro Treaty, was less than a third of the sum, \$10,000,000, paid to Panama in the treaty of 1903.

The Chamorro-Weitzel Treaty was submitted to the United States Senate on February 24, 1913, but was not acted upon during that session of Congress.

Meanwhile, the signing of the treaty had aroused suspicion in the other Central American countries, and reports were received in Washington of public demonstrations and inflammatory newspaper articles in Costa Rica and Salvador.

THE "PROTECTOR PLAN" PROPOSED BY DIAZ

When Mr. Bryan took office as Secretary of State on March 4, 1913, under President Wilson's first administration, the canal project was revived and negotiations continued. Several changes in the treaty were contemplated, the most important being the so-called "Protector Plan," which had been suggested by President Diaz two years before.

On February 4, 1914, Diaz cabled to President Wilson as follows:

"The effect of the Platt Amendment on Cuba has been so satisfactory that since your Government is considering a canal convention with Nicaragua, I respectfully request that said convention be made to embody the substance of the Platt Amendment so that my countrymen may see Nicaragua's credit improved, her natural resources developed, and peace assured throughout the land. I believe that revolution will cease if your government can see its way clear to grant the addition of the amendment as requested."¹³

This suggestion was apparently viewed with favor by Mr. Bryan and the treaty was extended to include the "Protector" clause. Under its terms the United States could intervene in the affairs of Nicaragua, whenever it was necessary to preserve Nicaragua's independence or to protect American life and property. Nicaragua was not to declare war without the consent of the United States, nor to enter into any treaties

12. U. S. *Foreign Relations*, 1913, p. 1021.

13. U. S. *Foreign Relations*, 1914, p. 953.

with foreign countries that would affect its independence or territorial integrity.

This article was rejected by the United States Senate, and a new treaty, without a "Protector" clause, was signed by Secretary Bryan and Emiliano Chamorro, Nicaraguan Minister to the United States, on August 5, 1914. The terms were not published until the treaty was finally ratified by the Senate, almost two years later, June 24, 1916.

From the time of negotiation of the first treaty, however, the State Department and the Nicaraguan Government had received strenuous protests from other Central American countries, particularly Costa Rica, Salvador, and Honduras. These protestations were based on the rights claimed by Salvador in Fonseca Bay, and by Costa Rica under prior treaties with Nicaragua. Following the Diaz proposal for the establishment of an American semi-protectorate, protests were made that such a move would extend United States influence over the other Central American countries.

Costa Rica protested against the first canal treaty on April 17, 1913, and lodged additional protests with the State Department on July 17, 1914. After the signing of the new treaty, Costa Rica entered several protests, the first dated August 31, 1914.

THE CANAS-JEREZ TREATY OF 1858

Costa Rica's opposition was based on the claim that Nicaragua was not free to dispose of canal rights along the route of the San Juan River and the Great Lake of Nicaragua without first consulting her. A boundary treaty concluded between Nicaragua and Costa Rica on April 15, 1858, and known as the Canas-Jerez Treaty, had bound Nicaragua not to enter into any arrangement for the construction of a canal "without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries; provided that the said opinion is rendered within the period of thirty days after the receipt of the communication asking for it, if Nicaragua should have said that the decision was urgent; and, if the transaction does not injure

the natural rights of Costa Rica, the vote asked for shall be only advisory."¹⁴

This treaty had also provided that the Bay of San Juan del Norte, as well as Salinas Bay, should be common to both republics, and that the advantages of their use and the obligation to contribute to their defense should be common. Nicaragua was given exclusively the domain and sovereign jurisdiction over the San Juan River, but Costa Rica was to have the perpetual right of free navigation over certain portions of the river.

In 1886, the validity of the Canas-Jerez Treaty having come into dispute, Costa Rica and Nicaragua concluded a treaty submitting the question to the arbitration of the President of the United States (Grover Cleveland). Both parties agreed to abide by the decision of the arbitrator.

CLEVELAND AWARD UPHOLDS COSTA RICAN RIGHTS

The Award of President Cleveland was rendered on March 22, 1888, and contained the following findings with respect to the validity of the earlier Boundary Treaty:^{14a}

1. The above-mentioned Treaty of Limits, signed on the 15th day of April, one thousand eight hundred and fifty-eight, is valid.

2. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the River San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors in-

¹⁴. For the protests of Costa Rica see U. S. *Foreign Relations*, 1916, p. 811-898; 1917, p. 1100-1112.

^{14a}. U. S. *Foreign Relations*, 1916, p. 875 ff.

jurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

The Award of President Cleveland further stated that Costa Rica can deny to the Republic of Nicaragua the right of dividing the waters of the San Juan River in case such division will result in the destruction, or serious impairment of the navigation of the river where Costa Rica is entitled to navigate it. While the Treaty of 1858 did not give Costa Rica the right to be a party to the grant which Nicaragua might make for a canal, Costa Rica's opinion or advice as mentioned in Article VIII of the Treaty should be more than "advisory" or "consultative" in case that construction of the canal would involve an injury to the natural rights of Costa Rica. President Cleveland's decision read: "It would seem in such cases that her (Costa Rica's) consent is necessary, and that she may thereupon demand compensation for the concession she is asked to make."

On the basis of this Award and the Treaty of 1858, Costa Rica now protested that Nicaragua was without legal capacity to enter the Chamorro-Weitzel Treaty with the United States without first requesting the opinion of Costa Rica, which Nicaragua had failed to do in this case.

The United States did not officially answer the first protest of Costa Rica for more than a year. On August 1, 1914, Secretary Bryan, in a note to the Costa Rican Minister, stated:

"It is not perceived that Nicaragua, by the proposed Treaty with the United States, has done or contemplates doing anything that can be regarded as a violation of the Treaty of 1858."

UNITED STATES DENIES INJURY TO COSTA RICA

The sale of the option, according to Mr. Bryan, did not necessarily involve immediate construction of the canal, and in any event the "consultative right of Costa Rica was to exist," in the words of President Cleveland's Award, "when the territory belonging to Costa Rica is occupied or flooded,

or where there is encroachment upon certain harbors injurious to Costa Rica." On July 24, 1914, Secretary Bryan wrote the American Minister to Costa Rica as follows:¹⁵

"My dear Mr. Hale:

"The Costa Rican Government seems to be very actively opposed to the proposed treaty with Nicaragua. This treaty covers an option on a canal route and a naval base in Fonseca Bay. Please explain to the Government that they need not fear that any rights that they have will be disregarded. Their treaty with Nicaragua does not require that Nicaragua must secure the consent of Costa Rica, but only provides that Costa Rica shall be consulted, and the words of the treaty indicate that the consultation is to be for the purpose of protecting Costa Rica from injury in case a canal is built. This Government will, of course, safeguard Costa Rica from injury in case a canal is built along the Costa Rican boundary, and we have assured the Costa Rican Government through Minister Calvo that we also are ready and willing to purchase an option from Costa Rica on terms as favorable as those given by Nicaragua. We are also willing to lease a naval base near the southern extremity of Costa Rica, but were assured that Costa Rica did not desire to make such a lease.

"As to the Platt Amendment, we have explained to Minister Calvo that that has not been decided upon. . . .

Yours (etc.),

Bryan."

Mr. Bryan stated that it could hardly be contended that the proposed treaty with Nicaragua even remotely affected any of these rights.¹⁶

COSTA RICA AND SALVADOR OPPOSED TO "PROTECTORATE"

Further opposition to the pending treaty was encountered when it became known that the State Department was considering the inclusion of the so-called "Protector" clause. Both Costa Rica and Salvador entered protests, stating that, in view of the special nature of the relations existing between the Central American States since the beginning of their existence, the weakening of the autonomy of the Republic of Nicaragua would seriously affect the autonomy of the neighboring republics.

The nature of Costa Rica's opposition to the treaty was apparently misunderstood in

¹⁵ U. S. *Foreign Relations*, 1914, p. 963.

¹⁶ U. S. *Foreign Relations*, 1914, p. 964.

Washington. A note from Secretary Bryan¹⁷ to the American Minister at Costa Rica, stating that all misunderstanding had been removed when he explained the United States' desire to purchase a canal option from Costa Rica without any thought of including the Platt Amendment, drew a long reply from the Costa Rican Secretary of Foreign Affairs, who declared that Costa Rica would never be opposed to negotiating a canal convention with the United States. He merely desired that this negotiation should be conducted in accordance with stipulations of valid treaties—that is, the treaty must be with the concurrence of both Costa Rica and Nicaragua; in this way, and only in this way, would the United States be able to acquire a canal concession clear from all blot. Costa Rica further denied that it was concerned about the amount to be paid for a concession, or that its objections had been removed by the explanation that the Platt Amendment had been dropped.

COSTA RICA NOT OPPOSED TO CANAL CONSTRUCTION

Costa Rica, the note continued, would welcome a treaty for the actual construction of a canal; "but not one for the non-construction thereof, and the one that Nicaragua has concluded with the United States may be considered in reality of this character. Costa Rica could not treat on these grounds. It fully understands that this is not the most opportune moment for the United States, which has just crowned the great Panama enterprise, to endeavor to achieve another no less costly."¹⁸

The Foreign Minister suggested that the treaty fix a reasonable period—fifty years for example—for beginning construction and a proper period for completion.

TEXT OF THE BRYAN-CHAMORRO TREATY

On February 18, 1916, the United States Senate advised the ratification of the Bryan-Chamorro Treaty, with amendments to the effect that nothing in the convention is intended to affect any existing right of Costa Rica, Salvador or Honduras. The text of

the treaty as amended and ratified reads as follows:¹⁹

Article I. The Government of Nicaragua grants in perpetuity to the Government of the United States, forever free from all taxation or other public charge, the exclusive proprietary rights necessary and convenient for the construction, operation and maintenance of an inter-oceanic canal by way of the San Juan River and the great Lake of Nicaragua or by way of any route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated and maintained to be agreed to by the two Governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal.

Article II. To enable the Government of the United States to protect the Panama Canal and the proprietary rights granted to the Government of the United States by the foregoing article, and also to enable the Government of the United States to take any measure necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for a term of 99 years to the Government of the United States the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the Government of Nicaragua further grants to the Government of the United States for a like period of 99 years the right to establish, operate and maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Government of the United States shall have the option of renewing for a further term of 99 years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof.

Article III. In consideration of the foregoing stipulations and for the purposes contemplated by this convention and for the purpose of reducing the present indebtedness of Nicaragua, the Government of the United States shall, upon the date of the exchange of ratification of this convention, pay for the benefit of the Republic of Nicaragua the sum of three million dollars United States gold coin, of the present weight and fineness, to be deposited to the order of the Government of Nicaragua in such bank or banks or with such banking corporation as the Government of the United States may determine, to be applied by Nicaragua upon its indebtedness or other public purposes for the ad-

17. U. S. *Foreign Relations*, 1915, p. 1105.

18. U. S. *Foreign Relations*, 1915, p. 1109.

19. U. S. *Foreign Relations*, 1916, p. 849; *Treaty Series* No. 624.

vancement of the welfare of Nicaragua in a manner to be determined by two High Contracting Parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.

Article IV. This convention shall be ratified by the High Contracting Parties in accordance with their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington, in duplicate, in the English and Spanish languages, on the 5th day of August, in the year nineteen hundred and fourteen.

William Jennings Bryan (Seal)

Emiliano Chamorro (Seal)

The advice and consent of the Senate of the United States to the ratification of the said convention was given with the following proviso:

"Provided, That, whereas, Costa Rica, Salvador and Honduras have protested against the ratification of the said convention in the fear or belief that said convention might in some respect impair existing rights of said states; therefore, it is declared by the Senate that in advising and consenting to the ratification of the said convention as amended such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that nothing in said convention is intended to affect any existing right of any of the said named states."

While it contains no Platt Amendment, the Bryan-Chamorro Treaty seems to grant much more definite rights to the United States than had the Chamorro-Weitzel Treaty. In the Chamorro-Weitzel Treaty the United States merely received "exclusive rights" necessary for the construction of the canal, the details "to be fixed by mutual consultation between the governments whenever the construction of the canal shall be decided upon." In other words, this was an option. The Bryan-Chamorro Treaty, however, granted the United States "the exclusive proprietary rights" for such a canal, the details "to be agreed to by the two Governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal."

COSTA RICA AND SALVADOR RENEW PROTESTS

Following ratification by the Senate, both Costa Rica and Salvador entered protests with the United States and Nicaragua as parties to the treaty. Costa Rica's protest stated that inasmuch as the failure to consult Costa Rica dated from the moment the treaty was signed (August 8, 1914), Costa Rica could not regard the clause inserted at the last moment as of any remedial value. The note added that the Senate's action "could in no measure free that agreement from the fundamental defect that renders it void, to wit, the incompleteness of Nicaragua's capacity to negotiate that pact."²⁰

In reply Secretary Lansing stated that "in the light of the declarations of the Department in its note of August 1, 1914, and the aforesaid explicit declaration by Congress, I am unable to perceive any ground for protest on the part of your Government." In addition, Mr. Lansing cited a protocol of an agreement with the United States, executed separately by Costa Rica and Nicaragua, on December 1, 1900, whereby each government promised to enter into negotiations with the United States to settle the details of agreements found necessary to accomplish the ownership and control by the United States of an inter-oceanic group from San Juan del Norte to the Pacific. The agreements contemplated in the protocol had in fact been embodied in the treaty with Nicaragua, and the United States had indicated a willingness to negotiate a similar treaty with Costa Rica.

The validity of the protocol cited by Mr. Lansing was contested by Costa Rica, which stated that it had never been approved by the President of Costa Rica or ratified by that government, and that neither of the protocols had been approved by the Senate of the United States.

The protest of Salvador, dated March 3, 1916, again drew attention to the joint control of the waters of the Bay of Fonseca by the governments of Salvador, Honduras, and Nicaragua, and contested the right of Nicaragua to grant a lease for a naval base on the Bay.

²⁰ U. S. *Foreign Relations*, 1916, p. 811-12.

**COSTA RICA SUES NICARAGUA
IN CENTRAL AMERICAN COURT**

On March 27, 1916, Costa Rica informed the United States that it had brought suit against Nicaragua before the Central American Court of Justice, established by the Washington Treaties of 1907.

Articles I, XXII, and XXV of the Convention establishing the Central American Court, read as follows:

Article I. The high contracting parties agree by the present Convention to constitute and maintain a permanent Tribunal which shall be called the "Central American Court of Justice," to which they bind themselves to submit all controversies or questions which may arise among them, of whatsoever nature and no matter what their origin may be, in case the respective departments of foreign affairs should not have been able to reach an understanding.

Article XXII. The Court is competent to determine its jurisdiction, interpreting the treaties and conventions germane to the matter in dispute, and applying the principles of international law.

Article XXV. The interested parties solemnly bind themselves to submit to such judgments, and all agree to lend all moral support that may be necessary in order that they may be properly fulfilled, thereby constituting a real and positive guarantee of respect for this Convention and for the Central American Court of Justice.

In a reply to the Costa Rican Minister, the Acting Secretary of State, on May 22, declared that it was manifestly not contemplated that the Central American Court would undertake jurisdiction of matters concerning diplomatic relations between these countries and the United States.

Before replying directly to the Costa Rican Minister, Secretary Lansing, in a telegram to Minister Long at Salvador, indicated the attitude of Washington as follows:²¹

"The Department does not consider that any of the treaties or conventions between Central American governments, concluded at Washington in 1907, affect or were intended to affect, the international relations of any of those governments with the United States. Manifestly it was not contemplated that Central American Court for settlement of controversies between the signatory governments would attempt jurisdiction of any matter of diplomatic relation between the United States and any of those countries.

"In view of repeated declarations by Department and of proviso adopted by the United States Senate, that the treaty with Nicaragua was not intended to affect injuriously any right of Costa Rica involved, attempt by Costa Rica to interfere with freedom of action of Nicaragua in this matter cannot but be viewed by the United States as an unjustifiable effort to prevent Nicaragua from fulfilling her contractual obligations.

"You may discreetly make use of this statement of the position of the United States as in your judgment will be helpful."

The complaint filed by Costa Rica with the Central American Court of Justice alleged that Nicaragua, by entering into the Bryan-Chamorro Treaty, had violated the rights of Costa Rica, as defined by the Canas-Jerez Treaty of April 15, 1858, by the Cleveland Award of March 22, 1888, and by the Central American Treaty of Peace and Amity of December 20, 1907, and prayed that the Bryan-Chamorro Treaty be declared null and void.

**NICARAGUA DENIES
COMPETENCE OF COURT**

The Central American Court, in an order dated May 1, 1916, stated that the present case was within the jurisdiction of the Court, and that the plaintiff (Costa Rica) had complied with the requirements of the Convention establishing the Court. The Court ordered that the complaint be filed, and that Nicaragua be served with a copy, and invited to answer within sixty days after service. The magistrate for Nicaragua entered a dissenting opinion holding that the Court was incompetent on the ground that it could only take cognizance of disputes after failure to reach an agreement through diplomatic action, and that Costa Rica had not attempted negotiations with Nicaragua.

The Nicaraguan Government failed to answer the suit within the prescribed period and a new period of twenty days was allowed in accordance with Article XV of the Convention establishing the Court.

The Court finally received a message from the Department of Foreign Affairs of Nicaragua on August 25 stating that Nicaragua believed that it ought not answer the suit because it could not admit that the Court was competent to take cognizance of it, and informing the Court that should it decide

21. U. S. *Foreign Relations*, 1916, p. 831-2.

the question of competence in the affirmative, Nicaragua could not accept it. The note further denied that the Bryan-Chamorro Treaty was in any sense a contract for the sale of canal rights. It was merely an option giving the United States the right to conclude a treaty or contract at the proper time.

The Court decided to regard this note as an answer to the writ, and a hearing was set for September 11, 1916. The Nicaraguan Government did not appear, and the Costa Rican case was heard. After hearing the evidence, votes were taken on fourteen points comprised in the question blank. On nine points the Nicaraguan magistrate cast a dissenting vote.

OPINION OF THE CENTRAL AMERICAN COURT

After examining the facts, the Court held:

"a. The Republic of Nicaragua has exclusively the domination and supreme control over the San Juan River throughout the extent of its course; that is to say, it exercises rights of ownership over it, and it forms a part of the national territory subject to its sovereignty.

"b. That right is not absolute and suffers the restrictions which the aforesaid treaty (Canas-Jerez Treaty) points out:

"1. San Juan del Norte and Salinas Bay are common to the two republics; and consequently, at both terminal points of a possible canal the legal principle of joint ownership endures.

"2. Costa Rica, equally with Nicaragua, is obliged to guard and defend the River in case of foreign aggression, this stipulation demonstrating to what extent, in the mind of the negotiators, the moral and material interests of both people were bound up together.

"3. Costa Rica has in the San Juan River, for purposes of commerce, the permanent rights of free navigation from its mouth up to three miles of Castillo Viejo, and she may bring her vessels, too, on either shore indiscriminately without its being permissible to charge her any dues in the port where the navigation is common. It is, therefore, plain that the domination which the Republic of Nicaragua exercises over the San Juan River is not absolute or unlimited; it is necessarily restricted by the rights of free navigation attached thereto, and so remarkably granted to Costa Rica, especially if we consider that such rights exercised for fiscal and defensive purposes are confounded in their development, in the opinion of treatise

writers, with the sovereign faculties of *imperium*. Such a concession is equivalent to a real right of use, perpetual and unalterable, which places the Republic of Costa Rica in the full enjoyment of the ownership for practical purposes (*dominio util*) of a large part of the San Juan River without prejudice to the full ownership (*dominio pleno*) which Nicaragua preserves as sovereign of the territory."

RECOGNIZES VALIDITY OF BOUNDARY TREATY AND CLEVELAND AWARD

The Court did not accept Nicaragua's claim that the Bryan-Chamorro Treaty merely granted the United States an option which must be followed by a contractual treaty before it can be exercised; on the contrary, it stated that in the treaty "there was contracted a perfect alienation, a transfer in consideration of a fixed price of the property rights necessary and suitable for the canal route, of which the Republic of the United States is made owner in perpetuity and without any limitation." The Boundary Treaty and the Cleveland Award imposed the obligation of consulting Costa Rica as an act prior to any contract.²²

The Court quoted Article 10 of the Cleveland Award, which stated:

"The Republic of Nicaragua is obligated not to make concessions for purposes of a canal across its territory without first asking the opinion of the Republic of Costa Rica."

In making the Bryan-Chamorro Treaty Nicaragua had not kept this promise, but had kept the negotiations and the text of the treaty secret from Costa Rica. The Court said that the Bryan-Chamorro Treaty was "concluded without an official notice being given to the Costa Rican Government, notwithstanding a solemn agreement which imposed upon Nicaragua the undecidable obligation to hear the opinion of the former before concluding any concession regarding the interoceanic canal. . . Costa Rica ought to have been heard; and her voice might have been a consulting or a decisive one, according to the case." The construction of the canal implies the occupation of the Costa Rican shore of the San Juan River. As a result of the canal, the waters of the San Juan would be diverted from their course

²² U. S. Foreign Relations, 1916, p. 884. The Spanish text is given in the *Anales de la Corte de Justicia Centroamericana*. San José, Costa Rica. Vol. VI, Nos. 16-18, p. 1.

and the rights of navigation held by Costa Rica would be rendered nugatory. The Court pointed out that in times past Nicaragua had consulted Costa Rica in regard to proposed canal construction and that in a canal contract signed in Paris in 1868 it was stated that "if the Republic of Costa Rica refuses to adhere, the present treaty shall be annulled by that fact." This the Court believed was a recognition of a servitude on Nicaragua's dominion in favor of Costa Rica. The reservation of the United States Senate attempting to safeguard Costa Rica's rights was "ineffective as regards the legal relations between the nations at variance, inasmuch as the injury inflicted upon the rights of Costa Rica was consummated and the amendment does not produce the effect of restoring matters to the legal status" created by the Boundary Treaty. Moreover, the Nicaraguan Government, by excluding the amendment from the text of the treaty published in the *Nicaraguan Official Gazette*, had declined to accept the amendment.

The Court also held that in leasing a naval base to the United States in the Gulf of Fonseca and on Great Corn Island and Little Corn Island, Nicaragua failed to reserve certain rights of navigation guaranteed to Costa Rica in a treaty of 1907, and thereby violated this treaty.

The Central American Court rendered its final decision in the case of Costa Rica on September 30, 1916. The award declared that Nicaragua had violated the rights of Costa Rica, but the Court pronounced itself incompetent to make a declaration declaring the treaty null and void. The award reads as follows:

First. It is declared that the peremptory exception interposed by the High Party Defendant is denied, and that, in consequence, this Court is competent to decide the complaint brought by the Government of the Republic of Costa Rica against the Government of the Republic of Nicaragua.

Second. It is declared that the Government of Nicaragua has violated, to the injury of Costa Rica, the rights granted to the latter by the Canas-Jerez Treaty of Limits of April fifteenth, eighteen hundred and fifty-eight, by the Cleveland award of March twenty-second, eighteen hundred and eighty-eight, and by the Central American Treaty of Peace and Amity of De-

cember twentieth, nineteen hundred and seven; and

Third. That, respecting the prayer in the complaint asking that the Bryan-Chamorro treaty be declared null and void, this Court can make no declaration whatsoever.

NICARAGUA AND UNITED STATES IGNORE COURT DECISION

After this award was announced, Costa Rica, on October 30, 1916, informed the United States of the action taken by the Court, and beseeched the Secretary of State to express his opinion with respect to the action, and the future of the Court.²³ No answer to this note was received by the Costa Rican Government.

Nicaragua, when informed of the Court's award, replied in a letter strongly protesting against the Court's sentence, and flatly refusing to abide by the sentence on the ground that the tribunal was lacking in all competence for the trial of the case.

The Secretary of the Court entered a long rejoinder, explaining the grounds on which the Court based its competence to decide the case, and the reasons which led it to make the award. On receiving a second refusal from Nicaragua to abide by the award, the Court dispatched a note to the governments of Guatemala, Honduras, and Salvador, the other three members, explaining its action and the refusal of Nicaragua to abide by the judgment. The Court stated that it would seem that the other Central American governments were called upon to defend themselves against the charge brought by Nicaragua. Because of the fact that Nicaragua had denounced the decision of the Court, however, the other governments felt that it was futile to attempt to renew the Washington Treaty of 1907, establishing the Central American Court, and at the expiration of the ten-year period provided in the treaty the Court went out of existence.

SALVADOR ALSO FILES SUIT WITH COURT

Meanwhile, on August 29, 1916, a second state, Salvador, had filed suit with the Court against Nicaragua. In its complaint Salvador alleged:

1. That the establishment of a naval base by

²³ U. S. *Foreign Relations*, 1916, p. 887.

a powerful state in the immediate vicinity of Salvador constituted a serious menace to its free and independent life.

2. That the Bryan-Chamorro Treaty ignored and violated the rights of dominion which Salvador had in the Gulf of Fonseca. From the 16th to the 19th century, it was claimed, the Gulf of Fonseca was under the exclusive dominion of the Spanish Crown. When Central America was liberated, sovereignty over the Gulf passed to the Federal Republic of Central America composed of the five states. After the dissolution of the Federal Republic, the states of Salvador, Honduras, and Nicaragua remained the joint, lawful owners and sovereigns of the Gulf of Fonseca, no treaty or agreement having been made to bring to an end the condition of undivided and joint ownership which previously existed. Salvador alleged that the application of the principle of territorial bays applied to the Gulf of Fonseca.

3. That the treaty injured the primary interests of Salvador as a Central American state because alienation of territory by the Central American state to a foreign power adversely affected the formation of a Central American Union. The Constitution of Salvador declared that Salvador was a separate part of the Republic of Central America, and that it had the capacity of organizing a common national government with the other Central American states. Alienation of this territory would affect the interests of Salvador and the Union.

4. That the Bryan-Chamorro Treaty was contrary to Article II of the General Treaty of Peace and Friendship subscribed to by the Central American Republics in Washington on September 20, 1907, which states that none of the five republics shall alter in any form their constitutions. The Constitution of Nicaragua prohibited the negotiation of treaties that in any way impair the territorial integrity of the national sovereignty.²⁴

Nicaragua, in answer to an earlier protest of Salvador, denied the domination of the three republics in the waters of Fonseca Bay, claiming that Nicaragua possessed full sovereignty over the territory which it proposed to lease to the United States. Nicaragua had also claimed that its exclusive rights to the waters under consideration were defined by the demarkation of the boundary line of Nicaragua and Honduras effected in 1900 to 1904 by virtue of the Gamez-Bonilla Treaty of 1894.²⁵

At the time Salvador presented its case to the Court, Honduras protested that Salvador's claim with respect to the co-dominance

of the three states in the waters of Fonseca Bay was not acknowledged by Honduras.

COURT AWARD UPHOLDS SALVADOR

The decision of the Central American Court in the case of Salvador was handed down March 9, 1917. The judgment stated:

1. That the Court was competent to judge the case;
2. That the demurrers proposed by Nicaragua must be rejected;
3. That the Bryan-Chamorro Treaty, by the concessions which granted a naval base in the Gulf of Fonseca, threatened the national safety of Salvador and violated its rights of joint ownership in the waters of the Gulf;
4. That it violated Articles II and IX of the Treaty of Peace and Amity of December 20, 1907;
5. That the Government of Nicaragua was obliged to reestablish and maintain the legal status which existed before the Bryan-Chamorro Treaty.

The Court refrained from passing judgment on Salvador's plea that Nicaragua be compelled to abstain from fulfilling the Bryan-Chamorro Treaty.²⁶

Thus the Central American Court of Justice declared that in making the Bryan-Chamorro Treaty the Government of Nicaragua had violated its obligations under international law in three instances:

1. It had failed to consult Costa Rica during the negotiations in accordance with the Boundary Treaty of 1858 and the Cleveland Award.
2. In leasing the Little and Great Corn Islands to the United States, it had failed to safeguard rights granted to Costa Rica in a treaty of 1907.
3. In granting the United States a naval base in the Gulf of Fonseca, it had endangered the existence of Salvador, and had ignored the fact that the Gulf of Fonseca was jointly owned by the Central American States.²⁷

²⁴ U. S. Foreign Relations, 1917, p. 1101-1104.

²⁵ Cf. Dr. Salvador Rodriguez Gonzales, *Le Golfo de Fonseca en el Derecho Publico Centroamericano: La Doctrina Melendez*. See the same writer, *The Neutrality of Honduras and the Question of the Gulf of Fonseca*. (American Journal of International Law, 1916, p. 509.) Dr. Gonzales argues that the establishment of a naval base on the Nicaraguan coast of the Gulf of Fonseca is intended to violate the principle of Honduran neutrality. This neutrality was guaranteed in Article III of the Central American Treaty of December 20, 1907. This article, is however, omitted from the treaty as revised in 1923.

²⁴ U. S. Foreign Relations, 1916, p. 853.

²⁵ U. S. Foreign Relations, 1914, p. 958.

Despite the judgment of the Central American Court of Justice declaring Nicaragua's action in signing the Bryan-Chamorro Treaty a violation of its obligations, the treaty went into effect, and the United States paid over to Nicaragua the sum of \$3,000,000. The Nicaraguan Government had been induced to sign this treaty in the hope of finding means of compensating unpaid employees, and foreign claimants. As soon as the money was paid, New York bankers presented claims for back interest, and the State Department attempted to divide up the \$3,000,000 fund among these competing groups.²⁸ After long negotiations it was finally decided that more than two-thirds of the canal fund should be paid to foreign bond-holders and other claimants, while the remainder, amounting to about \$836,000, went to the Nicaraguan Government to pay overdue salaries and other internal debts.²⁹ Nothing went for productive purposes.

ROOT CRITICIZES BRYAN TREATY IN 1915

In January, 1927, Senator Borah read a letter to the Senate written by Mr. Elihu Root on January 7, 1915, which criticized the Bryan-Chamorro Treaty as follows:

"I was unwilling to have our Government accept from any Nicaraguan government a grant of power which I felt certain the people of Nicaragua could not and ought not to approve. With those provisions out, however, and nothing left but the grant which I have described, I would be for a favorable report on the treaty. I am, however, troubled about the question whether the Nicaraguan Government which has made the treaty is really representative of the people of Nicaragua and whether it will be regarded in Nicaragua and in Central America as having been a free agent in making the treaty. I have been looking over the report of the commanding officer of our marines in Nicaragua, and I find there the following: 'The present government is not in power by the will of the people; the elections of the House of Congress were mostly fraudulent.'

"And a further statement that the Liberals, that is to say, the opposition, 'constitute three-fourths of the country.' It is apparent from this report and from other information which has in a casual way come to me from various

sources that the present government with which we are making this treaty is really maintained in office by the presence of the United States marines in Nicaragua.

* * *

"That the government with which we are dealing, concerning which we are taking important grants, is in power by virtue of the force applied by the United States.

"This situation raises a very serious question, not about the desirableness of the treaty but about the way in which the treaty should be made. Can we afford to make a treaty so serious for Nicaragua, granting us perpetual rights in that country, with a President who we have reason to believe does not represent more than a quarter of the people of the country, and who is maintained in office by our military force, and to whom we would, as a result of the treaty, pay a large sum of money to be disposed of by him as President? I should be sorry to see the United States get into that position. We don't want to maintain a government in Nicaragua by military force perpetually, and it is highly probable that if we were to withdraw our force after making such a treaty there would be a revolution and the treaty would be repudiated.

"There is a good deal of evidence that the other people of Central America look at the subject in this way. I should be very sorry to see the Central Americans convinced that we wish to rule them by force, for it would be the end of all our attempts to benefit them and to help them along as we have been trying to do. I think we ought to keep before us always as an objective the building up of a stable and orderly Central American Union, and a good deal of progress in that direction has already been made."³⁰

EFFECT OF CANAL TREATY ON CENTRAL AMERICAN UNION

The attitude of the Central American states, particularly Salvador and Costa Rica, toward the Bryan-Chamorro Treaty, was affected by another factor which was not wholly revealed in the repeated protests lodged with Nicaragua and the United States. For almost 100 years the idea of a Central American Union had persisted among the political leaders of the five republics. Despite the fact that every effort to establish the Union had failed, the idea was kept alive and was embodied in the constitution of each of the five republics. The Bryan-Chamorro Treaty was viewed by many of the political leaders in the other Central American countries as a serious

28. Cox, I. J. *Nicaragua and the United States*. World Peace Foundation, p. 728.

29. U. S. *Foreign Relations*, 1917, p. 1150.

30. *Congressional Record*, January 13, 1927, p. 1557.

menace to the future realization of lasting unity. Should Nicaragua become a protectorate of the United States, it was argued, the sovereignty of the other Central American Republics would be jeopardized. Several unsuccessful attempts to hold a conference in regard to the proposed Union were made by Bertrand, the President of Honduras, and by Tinoco of Costa Rica. Nicaragua's suggestion that Panama, already bound to the United States by a canal agreement, should be invited as a prospective member of the Union, prevented any further consideration of the project for the time being.

THE SAN JOSÉ CONFERENCE OF 1920

A conference was finally convened at San José, Costa Rica, on December 4, 1920, with delegates representing Honduras, Salvador, Guatemala, Costa Rica, and Nicaragua. The Bryan-Chamorro Treaty proved the dominant issue. The Nicaraguan delegates refused to consider any treaty for a Union which did not specifically recognize the validity of the Bryan-Chamorro pact, and Nicaragua's right to carry out its provisions.³¹ Costa Rica and Salvador, while affirming their willingness to have Nicaragua fulfill all her obligations, declined to recognize, officially or publicly, the validity of the treaty which had been declared by the Central American Court of Justice to be in violation of their rights.

Strenuous efforts were made to find a formula acceptable to Nicaragua and Costa Rica, but to no avail. At one time the proposal was made that in order to solve this conflict of rights a general agreement between the United States and all of the interested Central American states should be negotiated in regard to the canal.³² The question of an article relating to treaties was referred back to the Nicaraguan Government and the Salvador Government.

COMPROMISE EFFORTS BY SALVADOR AND GUATEMALA

President Melendez of Salvador at first secured support for a conciliatory resolution

providing that existing treaties between the Central American Republics and other nations should be respected in their valid obligations and consequences, but these should not prevent the Federation, if formed, from undertaking further negotiations, when necessary, to modify them. Later, however, Salvador advised her delegates to the conference that "none of the stipulations in the proposed Treaty should be understood to alter or affect the rights acquired or recognized by or in virtue of sentences pronounced by international tribunals of justice or arbitrations in which one of the signatory states had intervened." The feeling persisted among many Salvadoreans that it was not possible to bring about a union of the five Central American countries, and, at the same time, give life to the Bryan-Chamorro Treaty without lessening national sovereignty, independence and honor.³³

In Nicaragua, President Emiliano Chamorro submitted a draft of the treaty to a meeting of prominent Nicaraguan leaders who declared that Nicaragua could not accept any convention which reflected upon Nicaragua's right to carry out existing treaties, or its former right to make them. After this action, Nicaragua virtually withdrew from the conference.

A final effort to secure Nicaragua's adherence was made by Guatemalan delegates who suggested that it might be possible to word Nicaragua's reservation so as to harmonize with the amendment adopted by the United States Senate when it ratified the Bryan-Chamorro Treaty. This suggestion was tentatively accepted by all the delegates, but, on January 17, Nicaragua announced finally that it could not accept the pact. Even in this modified form the vital article³⁴ implied that Nicaragua had not had the right to conclude the Bryan-Chamorro Treaty. The Nicaraguan delegates suggested that the conference adjourn in order that they might have time to review the whole situation.

33. *Diario del Salvador*, December, 1920-February, 1921.

34. Article IV. Until the Federal Government, by means of diplomatic action, has obtained the modification, annulment or substitution of the treaties in force between states of the Federation and foreign nations, each state shall respect and faithfully carry out the treaties by which it is bound in respect of any one or more foreign nations to the full extent implied in existing undertakings.

31. *Protocolo de la Conferencia de Plenipotenciarios Centro-americanos*, p. 20.

32. *Protocol*, cited, p. 23.

**UNION TREATY CONCLUDED
WITHOUT NICARAGUA**

This proposal was rejected and the treaty was completed without Nicaragua. Article XIX, however, expressed regret that Nicaragua would not immediately join the Federation of Central America, and provided that the Federation would give every facility for its entrance should Nicaragua later decide to enter the Union.

Although the treaty establishing the Federation of Central America was subsequently ratified by Honduras, Guatemala and Salvador, the abstention of Nicaragua and Costa Rica effectively prevented the actual establishment of the Union. The end came early in 1922 after a revolt in Guatemala overthrew the existing government. The new government declared void the decree accepting the Union Treaty.

**THE WASHINGTON
CONFERENCE OF 1923**

Thus the Bryan-Chamorro Treaty was apparently one factor which prevented the establishment of a Central American Federation. In December, 1923, the United States Government invited these same states to come to Washington to negotiate a number of agreements which, while not establishing a federation, provided for common action and for cooperation. The first conference along these lines had been held in Washington in 1907. At the 1923 conference twelve treaties were signed of which the most important were the Treaty of Peace and Amity, a Convention for the Establishment of an International Central American Tribunal, a Treaty for an International Commission of Inquiry, and the Convention for the Limitation of Armaments.

The General Treaty, in Article II, contained a provision that the governments of the contracting parties shall not recognize any other government which may come into power in any of the five republics through a *coup d'état* or revolution against a recognized government, so long as the freely elected representatives of the people have not constitutionally reorganized the country. Though not a party to this treaty, the United States agreed to be guided by its

principles in the recognition of Central American governments.

The treaty creating the Central American Tribunal did not attempt to re-establish the old Central American Court, but established instead a panel of judges from which the parties adhering to the treaty might select a certain number to hear a case. The contracting parties agreed to submit to the Tribunal all controversies, whatever their nature or origin, in the event that they had failed to reach an understanding through diplomatic channels. Nevertheless, the questions or controversies which affect the sovereign and independent existence of any of the signatory republics cannot be the object of arbitration or complaint. Thus this Conference put a definite end to the Central American Court of Justice. The new court cannot take jurisdiction over any question arising out of the Bryan-Chamorro Treaty; except possibly with Nicaragua's consent.

**1923 PROTOCOL BETWEEN
COSTA RICA AND UNITED STATES**

During the conference, and prior to the signing of the Conventions of 1923, the representative of Costa Rica signed a Protocol with Mr. Hughes to the effect that should the United States exercise the option contained in the Bryan-Chamorro Treaty and undertake the construction of a Nicaraguan canal, it would enter into negotiations with Costa Rica for the satisfaction of any rights which Costa Rica possessed. This Protocol was never ratified by Costa Rica or by the United States Senate. It is understood that Costa Rica, however, regards the Protocol as a definite promise that her rights will not be ignored in the event the canal is constructed.

Should the construction of a new canal across Nicaragua be undertaken as a result of either of the resolutions before Congress at the present time, the United States will be called upon to enter into negotiations with Costa Rica, Salvador and Honduras. The State Department has recently given the Minister of Costa Rica every assurance that this will be done prior to the building of a canal.

POLITICAL SIGNIFICANCE OF THE NICARAGUA CANAL

As soon as the United States decides to begin the construction of the Nicaragua Canal, it must negotiate another agreement with Nicaragua in regard to the details of such construction. In these negotiations it will have before it the treaty of November 3, 1903, in which Panama granted to the United States for the purpose of building the Panama Canal a zone ten miles wide across the Isthmus of Panama, excluding the cities of Panama and Colon. Panama also granted to the United States in perpetuity the use, occupation and control of any other lands outside the zone above described which may be necessary and convenient for the said canal or of any auxiliary canal. Under the treaty the United States has the right to intervene in Colon and Panama in case they do not comply with the sanitary ordinances of the United States or maintain order.

The Panama Canal is surrounded entirely by Panamanian territory. The influence of the United States arising out of the canal is therefore limited immediately to Panama. The building of the Nicaragua Canal along the Costa Rican border would cast the poli-

tical influence of the United States over the latter country as well as over Nicaragua. The erection of naval bases on each side of the Central American peninsula, as authorized in the Bryan-Chamorro Treaty, would strengthen the military and political position of the United States throughout the whole area of Central America and the Caribbean.

The political importance of the Nicaragua Canal was emphasized by Senator Walter E. Edge, in an address before the Academy of Political and Social Science at Philadelphia, on May 12, 1928. In this address he said:

"I repeat, the better understanding between Nicaragua and the United States with this gigantic engineering project being developed right through that country cannot be over-estimated. It likewise brings us near to Costa Rica, because a large portion of the Canal would border that country.

"Our rights on Fonseca Bay for a naval station, which are a part of the Treaty with Nicaragua already concluded, would give us close contact with Salvador and Nicaragua. Therefore, by undertaking to carry out this proposition, a practical constructive contribution to trade and commerce, we are likewise through close association brought into almost daily contact with four-fifths of Central America."

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